Supreme Court, U.S.
FILED

(1)

971472 MAR 5 1998

OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States

October Term, 1997

MICHAEL A. HADDLE,

Petitioner,

vs.

JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee for certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR A WRIT OF CERTIORARI

CHARLES C. STEBBINS
WARLICK, TRITT & STEBBINS
699 Broad Street
1500 First Union Bank Bldg.
Augusta, GA 30901-1454
(706) 722-7543

Attorneys for Petitioner

26 pp

QUESTION PRESENTED FOR REVIEW

Is loss of "at will" employment compensable damages under 42 U.S.C. § 1985(2)?

PARTIES TO THE PROCEEDING

The parties to the proceeding are all named in the caption hereof.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Authorities	iiii
Statement Concerning Reports of Opinions	1
Statement of Jurisdiction	1
Statutory Provision Involved	1
Statement of the Case	2
Argument	8
Appendix A - Opinion of the United States Court of Appeals for the Eleventh Circuit filed December 5, 1997	1a
Appendix B -Order of the United States District Court for the Southern District of Georgia dated June 25, 1996	3a

TABLE OF AUTHORITIES

CASES

Favors v. Alco Mfg. Co., 367 S.E.2d 328 (Ga. App. 1998) 8

Irizarry v. Quiros,722 F.2d 869 (1st Cir. 1983) . . . 12

Kush v. Rutledge, 460 U.S. 719 (1983) 9,13,14

Lynch v. Household Finance Corp., 405 U.S. 538 . 9

Morast v. Lance, 807 F.2d 926 (11th Cir. 1987) . . 6,8,9.14

Portland v. County of Santa Clara, 995 F.2d 898 (9th Cir. 1993) 12,14

Troy v. Interfinancial, Inc., 320 S.E.2d 872 (Ga. App. 1984) cert. denied 8

United States v. Pacelli, 491 F.2d 1108 (2d Cir. 1974), cert denied, 419 U.S. 826 (1974) . . 10

United States v. Thevis, 665 F.2d 616 (5th Cir. Unit B, 1982) 10

STATUTES

42 U.S.C. §1985(2) 1,6-13,15

42 U.S.C. §1985(3) 1

Petitioner, Michael A. Haddle, respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

REPORTS OF OPINIONS

Neither the opinion of the United States Court of Appeals for the Eleventh Circuit in this proceeding, nor that of the United States District Court for the Southern District of Georgia in the proceeding has been reported.

STATEMENT OF JURISDICTION

The Opinion of the United States Court of Appeals for the Eleventh Circuit in this matter was entered on December 5, 1997. Its Judgment was filed the same day. There was no application for re-hearing. This Court has jurisdiction to review this Judgment by writ of certiorari by reason of 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The petition involves only the construction of 42 U.S.C. § 1985 (2) and the concluding portion of §1985 (part of §1985(3)), the verbatim text of which is as follows:

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending

such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

. . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein thereon do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

In 1994 and early 1995, Petitioner Michael A. Haddle ("Haddle"), plaintiff in the District Court below, had a management level job with Respondent Healthmaster, Inc. ("Healthmaster"), a home health care company which received most of its revenues from Medicare

reimbursement. Healthmaster was controlled by its President, Respondent Jeannette G. Garrison ('Garrison"), who together with her husband owned all the stock of the company. Haddle did not have an employment contract. He was employed "at will", meaning that under state law he could be discharged by his employer at any time, without cause.

In 1994, the U.S. Government began a far-reaching investigation of Healthmaster and Garrison, which resulted in the indictment of Healthmaster, Garrison and others in March of 1995 on charges of Medicare fraud and other crimes (the "Criminal Case"). Subsequently, as part of a plea bargain, Garrison pleaded guilty to some of these charges and repaid the Government in excess of $11,000,000. She is now serving a federal criminal sentence. Charges against Healthmaster were dropped as part of this plea bargain.

Haddle cooperated with this investigation during 1994 and 1995. His cooperation was known to Garrison and others at Healthmaster, including its in-house counsel, Respondent J. Peter Molloy ("Molloy"). Garrison was heard to vow that if anyone testified against her, he would be "destroyed". Further, in January of 1998, Robert Pittard, the director of human relations at Healthmaster, was present during a conversation between Garrison and Molloy, at which Garrison and Molloy specifically discussed retaliation against Haddle for his cooperation with the Government and his expected grand jury and trial testimony. Garrison and Molloy discussed in Pittard's hearing how they could safely retaliate against Haddle. Fearing that the Government would object to retaliation against one of its witnesses, they devised a plan to bring in an outside person to perform some of Haddle's

functions, so that it would appear that his job had become redundant.

After the indictment of Healthmaster and Garrison, the Health Care Financing Agency refused to continue Medicare reimbursement payments to Healthmaster. In order to save the company's business, Garrison had the operating part of the business transferred to a subsidiary, Healthmaster Home Health Care, Inc., which was placed under the protection of Chapter 11 of the Bankruptcy Code. This subsidiary then obtained an injunction from the Bankruptcy Court which effected the resumption of Medicare reimbursement payments. As part of this process, Garrison and Healthmaster were barred from any participation in the management of the subsidiary, Healthmaster Home Health Care, Inc.

Under Chapter 11, Healthmaster Home Health Care, Inc. was placed under the supervision of a Trustee, who had the sole authority to hire and fire. Shortly before the bankruptcy, Garrison had installed Molloy as President of the subsidiary, at a very large increase in salary. The Trustee retained Molloy as President of the company and, initially, retained Haddle in his position. However, Molloy recommended to the Trustee that Haddle be fired, asserting that an outside person had been brought in to perform Haddle's functions, rendering him redundant, and further that Medicare would not reimburse his salary. These statements were untrue. The Trustee discharged Haddle solely on Molloy's recommendation, without making any independent investigation.

The foregoing statement of facts takes as true the allegations of Haddle's complaint. As to the results of the Criminal Case, Garrison's vow to destroy those who

cooperated with the Government, what Pittard heard Garrison and Molloy say in plotting their conspiracy, and how Molloy persuaded the Trustee to fire Haddle, it is also based on the testimony given at trial in the companion case of O'Neal v. Master Health Plan, Inc., Case No. 96-028, in the United States District Court for the Southern District of Georgia. In that case, another company also controlled by Garrison was charged with having fired the plaintiff O'Neal in retaliation for his cooperation with the same government investigation that resulted in the Criminal Case. In the O'Neal case, the District Judge allowed testimony concerning Haddle's discharge. Rejecting the contention that this evidence should not have been admitted in the O'Neal case, the District Judge commented that

> "While it is true that Haddle worked for another of Garrison's companies, the manner in which he was discharged was sufficiently similar to O'Neal's discharge to allow the introduction of evidence of Haddle's termination. Haddle was a high ranking official in a health care company owned and managed by Garrison and claims that he was terminated after refusing to comply with corporate practices that he believed to be illegal. (Trial. Tr. at 160 (direct testimony of Haddle).) [footnote omitted]. Evidence of his termination was introduced by O'Neal in order to show that Garrison, acting through her closely-knit health care organizations, would terminate or have terminated high ranking officials in retaliation for legal conduct that she found objectionable. Haddle's termination clearly was similar in nature to O'Neal's termination, and showed

that Garrison had the intent and motive to engage in a systematic plan or scheme to rid the ranks of her executives who posed a threat to her illegal activities. (Trial Tr. at 138-40 (Haddle's testimony).)"

- Order, O'Neal v. Master Health Plan, Inc., Case No. 96-028 in the United States District Court for the Southern District of Georgia, pp. 16-17, June 30, 1997.

The O'Neal case resulted in a jury verdict and judgment in favor of the plaintiff, which is now on appeal to the United States Court of Appeals for the Eleventh Circuit as Case No. 97-8842. This information is provided to illustrate what Haddle would have proved herein had his case not been dismissed on motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure, as complained of herein.

Haddle brought this action under 42 U.S.C. 1985(2) against Garrison, Healthmaster, Molloy, and Respondent Dennis Kelly ("Kelly") (an associate of Garrison's and an officer of Healthmaster, who is also now serving a federal prison sentence upon his conviction for Medicare fraud arising out of the same investigation), alleging that these defendants conspired to bring about Haddle's discharge by deceiving the Trustee, in order to effectuate retaliation against Haddle.

Haddle admitted that he was an "at will" employee under state law and that his only damages were the loss of his job. The District Court dismissed the case on the authority of Morast v. Lance, 807 F.2d 926 (11th Cir. 1987), which holds that loss of "at will" employment cannot

be cognizable damages under 42 U.S.C. 1985(2). The District Court did not reach any other issue or defense.

Haddle was employed by Healthmaster until April 13, 1995. From that date until his discharge, Haddle was employed by Healthmaster Home Health Care, Inc. On March 8, 1995, a federal grand jury indicted Garrison, Healthmaster, Kelly and others for Medicare fraud and related charge in the Criminal Case. On March 8, 1995, Haddle had cooperated with the investigation in the Criminal Case and had appeared pursuant to subpoena to testify before the grand jury, although his testimony was not actually taken due to the press of time. On June 21, 1995, after Garrison, Kelly and Healthmaster had become aware that Haddle would appear as a witness at trial in the Criminal Case, Molloy, who (the complaint alleges) acted in this matter at the direction of Garrison and Kelly and pursuant to a prior understanding and agreement for this purpose, caused Haddle to be terminated by the Trustee from his employment at Healthmaster Home Health Care, Inc. The complaint further alleges that these defendants made this decision for the purpose of retaliating against Haddle for his cooperation with federal agents and his appearance to testify at the federal grand jury and in order to intimidate him and others from cooperating and testifying in the Criminal Case.

Haddle will show, as was shown in the companion case above referenced, that Molloy was hand-picked by Garrison to operate Healthmaster Home Health Care, Inc. and that the reason Molloy gave to the Trustee in bankruptcy for terminating Haddle was neither the true reason or nor even the reason Molloy gave other persons, including the State of Georgia when responding to

Haddle's claim for unemployment compensation. In short, the Trustee was hoodwinked.

ARGUMENT

42 U.S.C. §1985(2) provides a civil remedy for the victim of a conspiracy "to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified . . ." 42 U.S.C. §1985(2). Notwithstanding this broad language, the Court of Appeals for the Eleventh Circuit ruled in Morast v. Lance, 807 F.2d 926 (11th Cir. 1987) that a federal witness, who is the victim of a successful conspiracy to have him fired from his job in retaliation for his testimony has no cognizable damages under this statute, if his job was one which was terminable by his employer "at will". The Court of Appeals followed this precedent in this case, applying it even in this suit which is not against Haddle's employer, but rather against third parties who conspired to cause his employer to fire him. It did so even though Georgia law is clear that an employee has a "property right" in his at will employment (although not a right assertable under state law against the employer itself). Troy v. Interfinancial, Inc., 320 S.E.2d 872, 877 (Ga. App. 1984), cert denied. See also Favors v. Alco Mfg. Co., 367 S.E.2d 328, 332 (Ga. App. 1988) (at will employee has "valuable contract right" in his at will

employment).[1] The Eleventh Circuit thus stripped the protection of the statute from those most vulnerable and most in need of it: employees who hold their livelihood "at the will" of their employers, so that those against whom they testify have only to persuade their employers to discharge them from their precarious employment, in order to inflict tremendous injury.

The Court of Appeals reached this perverse conclusion in Morast v. Lance as one of three alternative holdings, any one of which would have sustained its judgment. It stripped at will employees of this vital protection almost casually and as an aside, with virtually no citation of authority or expressed reasoning. What the Court of Appeals did say in Morast v. Lance shows that it failed to distinguish between actions under Section 1985(3) and those under Section 1985(2), a distinction carefully made by this Court in Kush v. Rutledge, 460 U.S. 719 (1983).

The effect of this holding is that a witness in a federal criminal proceeding, who is protected against being interfered with or retaliated against by a specific provision of federal law, 42 U.S.C. §1985(2), has no federal remedy if he is fired from his job for being a witness, if his employment is terminable "at-will" under state law. 42 U.S.C. Section 1985(2), a portion of the Civil Rights Act of

---

[1] "(T)he rights that Congress sought to protect in the Act of 1871 [now 42 &.S.C. §1985] were described by the chairman of the House Select Committee that drafted the legislation as 'the enjoyment of life and liberty, with the right to acquire and possess property of every kind . . .'" Lynch v. Household Finance Corp., 405 U.S. 538, 545 (1972) (emphasis supplied).

1871 which was passed expressly to give a remedy to those injured by intimidation and retaliation for exercising their federal right and duty to give evidence in federal court proceedings, is thus rendered of no effect to remedy this most serious and most likely of harms. This seriously affects the integrity of the federal judicial system and the administration of federal law.

All employee should be protected from retaliatory loss of his job by 42 U.S.C. §1985(2). Haddle, like every other worker in America, is protected by federal law against being intimidated or retaliated against, in his employment or otherwise, for exercising a federal right. To hold otherwise would be to upset one of the clearest and best established principles of civil rights law. Where an employee is discharged for a federally proscribed reason, such as to intimidate and retaliate against him for testifying in a federal court proceeding, he does have a legally cognizable injury.

Testifying in a federal trial is a right protected under the United States Constitution. Absent this right, "the foundations of federal justice would be undermined." United States v. Thevis, 665 F.2d 616, 626 (5th Cir. Unit B, 1982), quoting United States v. Pacelli, 491 F.2d 1108, 1113 (2d Cir. 1974), cert. denied, 419 U.S. 826 (1974).

On this issue, there is a clear conflict between United States Courts of Appeals. The United States Court of Appeals for the Ninth Circuit has held that an at will employee can sue for loss of his job under 42 U.S.C. Section 1985(2):

> Section 1985(2) contains two clauses that give rise to separate causes of action. The

> first clause concerns access to *federal* courts, giving rise to a cause of action where two or more persons in any State or Territory conspire [A] to deter, by force, intimidation, or threat, any party or witness *in any court of the United States* from testifying to any matter pending therein, freely, fully and truthfully, or [B] *to injure such party or witness in his person or property on account of his having so attended or testified . . .*
>
> As to the denial of access to federal courts, the complaint alleges that the defendants acted and conspired to retaliate against plaintiff for seeking legal redress for violations of his civil rights in the courts of the United States.
>
> The retaliation allegedly took many forms, culminating in his termination.
>
> . . .to make out a claim based on retaliation under the first clause of section 1985(2), a plaintiff must prove four elements: (1) a conspiracy by the defendants; (2) to injure a party or witness in his or her person or property; (3) because he or she attended federal court or testified in any matter pending in federal court; (4) resulting in injury or damages to the plaintiff. 42 U.S.C.§1985(2); *cf. Chahal v. Paine Webber, Inc.*, 725 F.2d 20, 23 (2d Cir. 1984) (setting out elements for witness intimidation under §1985(2)).

The district court dismissed Portman's complaint on the basis of the second and fourth elements, concluding "a cause of action for denial of access to the courts was not meant to provide a remedy for repercussions such as a salary denial or termination." We disagree with this conclusion. Although this court has not addressed the question, other circuits have concluded that plaintiffs who `have proved that they were denied [employment opportunities as a result of a conspiracy] because they previously had instituted legal actions to vindicate their federal rights' have made out claims under section 1985, even where they had no constitutionally protected property interest in the job. *See Irizarry v. Quiros*, 722 F.2d 869, 871 (1st Cir. 1983); *see also Wright v. No Skiter Inc.*, 774 F.2d 422 (10th Cir. 1985) (plaintiff alleging that the defendants conspired to defeat his low bid for a contract in retaliation for his bringing a federal suit states a claim under §1985(2)). As the court in Irizarry explained, "'[p]roperty here must include any economic damage that would be recognized in an ordinary tort suit.'" *Id.* We see no reason to depart from the approach of those cases, and conclude that the district court erred in dismissing the claim on this basis.

- Portland v. County of Santa Clara, 995 F.2d 898, 909-910 (9th Cir.1993).

Similarly, in Irizarry v. Quiros, 722 F.2d 869 (1st Cir. 1983), the court affirmed a judgment in favor of various farm workers who proved that they had been denied reemployment because they previously had instituted legal actions to vindicate their federal rights. The First Circuit reasoned: "Defendants' conduct was obviously designed to intimidate and deter, and plaintiffs clearly were 'injured' in their 'person or property.' 'Property' here must include any economic damage that would be recognized in an ordinary tort suit." Id. at 871.

This Court has recognized that an action under Section 1985(2), such as this, is favored and should not be subject to the constraints that govern actions relating to deprivations under color of state law such as are addressed by Section 1985(3). Kush v. Rutledge, 460 U.S. 719 (1983). In Kush, plaintiffs had brought an action under Section 1985(2) alleging that certain parties had "engaged in a conspiracy to intimidate and threaten various material witnesses in order to prevent them from testifying "freely, fully and truthfully" in his lawsuit in federal court. 460 U.S. at 721. The Court of Appeals distinguished those parts of the Civil Rights Act of 1871 relating to "obstruction of justice at the state level," from others relating to "interference with federal litigation," noting that the latter are "institutionally linked to federal interests." 460 U.S. at 772, 725. The Supreme Court upheld the Court of Appeals in its determination that, where intimidation of federal witnesses is involved, the statute does not require race or class based animus, as it does in other actions such as those alleging intimidation in state court proceedings or other contexts, emphasizing the more direct federal interest in protecting federal witnesses. The case signaled the Supreme Court's view that actions under Section 1985(2) should be given a much broader construction than actions

under Section 1985(3), in order to vindicate and protect the important and unique federal interest in the right of citizens to take part and cooperate in cases pending in federal courts.

The Eleventh Circuit in Morast v. Lance disposed of the at will employee's Section 1985(2) claim in three sentences:

> "Finally, to make out a cause of action under Section 1985(2), the plaintiff must have suffered an actual injury. Because Morast was an at will employee . . . [citation omitted], he had no constitutionally protected interest in continued employment. Therefore, Morast's discharge did not constitute an actual injury under this statute."
>
> –807 F.2d at 930 (emphasis supplied)

It appears that the Eleventh Circuit failed to consider a difference between an action under subsection 3 of Section 1985 and subsection 2 thereof, as expressed by this Court in Kush v. Rutledge. The issue in interpreting Section 1985(2) is not what is a "constitutionally protected" interest, but rather merely what the reach of this federal statute, enacted to protect the integrity and operation of the federal courts, is under its own wording.

To attempt to reconcile the holding of Morast v. Lance, as applied by the Eleventh Circuit in this case, with the explicit holding of the Ninth Circuit in Portland, or with the reasoning of the First Circuit in Irizarry, presents a very stark issue: Is a federal witness, whose person and

property are protected from interference by Section 1985(2), still subject to being fired from his job with impunity, so long as he is an at-will employee?

An at will employee, who holds his job at the mercy of his employer, cooperates as a federal witness before a federal grand jury in a federal investigation of criminal conduct by his former employer and officers of his former employer. In response, these persons successfully conspire to have him discharged from his at will employment in retaliation for his cooperation with the government, his appearance to testify before the grand jury and his expressed intention to testify at the criminal trial. They are able to do this because one of them is in effective control of the witness's present employer. Their conspiracy is evidenced by direct testimony. Yet the Eleventh Circuit has ruled that this witness has no remedy under federal law for violation of his federal right by these persons, because his employment was terminable at will under state law. The Ninth Circuit has decided to the contrary. The First Circuit clearly would decide to the contrary. This Court should resolve this conflict in favor of protection of federal witnesses and the integrity of the administration of justice in the federal courts, in line with the purpose and wording of 42 U.S.C. §1985(2).

Respectfully submitted,

CHARLES C. STEBBINS, III
Counsel of Record
WARLICK, TRITT & STEBBINS
699 Broad St.,1500 First Union Bank
Augusta, GA 30901-1454
(706) 722-7542

APPENDIX A - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED DECEMBER 5, 1997

No. 96-9072

D. C. Docket No. 96-00029-CV-1 (AAA)

MICHAEL A. HADDLE,

Plaintiff-Appellant,

versus

JEANETTE G. GARRISON, DENNIS KELLY,
G. PETER MOLLOY, JR., HEALTHMASTER, INC.,
CHRISTOPHER GARRISON, individually and as
Trustee of certain trusts,
JOHN DOES, 1 Through N, individually and
as Trustees of certain trusts,

Defendants-Appellees.

Appeals from the United States District Court for the Southern District of Georgia

---

(December 5, 1997)

Before COX and BARKETT, Circuit Judges, and HUNT,* District Judge.

PER CURIAM:

---

*Honorable Willis B. Hunt, Jr., U. S. District Judge for the Northern District of Georgia, sitting by designation.

Michael A. Haddle appeals following the district court's dismissal of his 42 U.S.C. § 1985(2) claim for failure to state a claim. We conclude that Haddle's arguments on appeal are foreclosed by this court's decision in *Morast v. Lance*, 807 F.2d 926 (11th Cir. 1987). The judgment of the district court is therefore affirmed.

AFFIRMED.[1]

---

[1] No member of this panel nor other judge in regular active service on the court has requested that the court be polled on Haddle's Suggestion of Hearing En Banc. See Fed.R.App.P. 35; 11th Cir.R. 35-5. Therefore, Haddle's Suggestion of Hearing En Banc is denied.

APPENDIX B - ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA DATED JUNE 25, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL A. HADDLE, CIVIL ACTION	:	
Plaintiff,	:	
v.	:	
JEANETTE G. GARRISON, DENNIS KELLY, G PETER MOLLOY, JR., HEALTHMASTER INC., a Georgia Corporation, CHRISTOPHER GARRISON, individually and as Trustee of certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,	:	
Defendants.	:	NO. CV196-29

ORDER

Plaintiff, Michael A. Haddle, has brought the current litigation seeking damages under Section 1985(2) of Title 42 to the United States Code, and state law. Presently before the Court are four motions to dismiss for failure to state a claim upon which relief can be granted under Rule

12(b)(6) of the Federal Rules of Civil Procedure. These motions have been filed by Defendants, Jeanette G. Garrison (DKT. # 21), Healthmaster, Inc. (DKT. # 23), Christopher Garrison (DKT. # 26), and G. Peter Molloy, Jr. (DKT. # 44). For the reasons stated below, Defendants' motions will be **GRANTED.**

FACTS

Haddle is a former employee of Healthmaster Home Health Care, Inc. He claims that he was improperly discharged from his employment by Defendants in an attempt to deter his participation as a witness in a Federal criminal trial. At the times relevant to this litigation, Haddle concedes that he was an at-will employee.

DISCUSSION

I. Rule 12(b)(6)

Rule 12(b)(6) permits a defendant to move to dismiss a complaint on the grounds that the plaintiff has failed to state a claim upon which relief can be granted. A motion under Rule 12(b)(6) attacks the legal sufficiency of the complaint. In essence, the movant says, "Even if everything you allege is true, the law affords you no relief." Consequently, in determining the merits of 12(b)(6) motion, a court must assume that all of the factual allegations of the complaint are true. Jackson v. Okaloosa County Fla., 21 F.3d 1531, 1534 (11th Cir. 1994). A court should not dismiss a complaint for failure to state a claim unless it is clear that the plaintiff can prove "no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80

(1957).; See also Blackston v. State of Alabama, 30 F.3d 117, 119 (11th Cir. 1994)(citing, Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984)).

II. 42 U.S.C. § 1985(2)

Section 1985(2) grants a private cause of action for injuries when:

> [T]wo or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified . . . .

In the case at bar, Haddle assets that he can maintain an action under Section 1985(2) despite the fact that he was defined as an at-will employee during the term of his employment. This is directly contrary to binding precedent of the Eleventh Circuit. Case law states:

> [T]o make out a cause of action under §1985(2) the plaintiff must have suffered an actual injury. Because [Plaintiff] was an at-will employee . . . he has no constitutionally protected interest in continued employment. Therefore, [Plaintiff's] discharge did not constitute an actual injury under this statute.

Morast v. Lance, 807 F.2d 926, 930 (11th Cir. 1987). Given the clear language of Morast, the Court is required to **DISMISS** Haddle's claim under Section 1985(2).

III. State Law Claims

Haddle has also alleged numerous state law claims against Defendants. Since the federal issue pending in this litigation has been disposed, the Court believes that the remaining state law issues should be left to the courts of Georgia. The Court declines to retain discretionary supplemental jurisdiction over the remainder of this case. See 28 U.S.C. § 1367 (c)(3).

CONCLUSION

The Court has determined that, under Rule 12(b)(6) Haddle has failed to state a federal claim upon which relief can be granted. His claim under section 1985(2) is **DISMISSED** with respect of the above named Defendants.[2] Additionally, all state law claims are **DISMISSED WITHOUT PREJUDICE.**

SO ORDERED, this 25 Day of June, 1996

S/S Anthony A. Alaimo
JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

---

[2] Haddle's claims against Dennis Kelly and the unnamed John Does cannot be dismissed, as a motion requesting such action has not been filed.